

PRESIDENT'S OFFICE **CANADA BORDER SERVICES AGENCY**
DU CANADA
BUREAU DU PRÉSIDENT
DÉPARTEMENT DU BUREAU DE LA PRÉSIDENTE
SERVICES FRONTIERS DU CANADA



Canada Border Services Agency Agence des services frontaliers du Canada

2016 JUN 20 10 33

AGENCE DES SERVICES
FRONTIERS
DU CANADA
BUREAU DU PRÉSIDENT
CBSA/ASFC-16-02849

ROUTING SLIP / BORDEREAU D'ACHEMINEMENT

ACTION REQUIRED/ MESURE REQUISE			
Name and telephone number/ Nom et numéro de téléphone	Initials and date / Initialles et date	Action	Information
President/Présidente Linda Lizotte-MacPherson	<i>Linda L</i> JUN 20 2016	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Executive Vice-President/ Vice-présidente exécutive Nada Semaan		<input checked="" type="checkbox"/>	<input type="checkbox"/>
A/Vice-President/ Vice-président, p.i. Jean-Stéphen Piché	<i>JSP</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Director General/ Directeur général Robert Mundie	<i>RBM</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Executive Director/ Directeur exécutif Colin Boyd Tel. /Tél. : 613-948-7882	<i>Colin Boyd</i> JUN 17 2016	JUN 17 2016 1:30	
Subject/Objet :	Standing Committee on Public Safety and National Security (SECU) – Follow-up to Committee		
Action/Mesure :	For approval / Pour approbation		
BF/AR :	2016-06-17		
<p>On June 2, 2016, the Minister of Public Safety, the President of the CBSA, and other senior officials from the Public Safety portfolio appeared before the Standing Committee on Public Safety and National Security. The President of the Canada Border Services Agency committed to provide additional information with respect to the costs related to implementing the Entry-Exit Initiative.</p> <p>The enclosed response has been approved by the Associate Vice-President, Programs Branch, and attested to by the Chief Financial Officer.</p> <p>Given that Parliament will be adjourning next week, departments have been asked for timely submissions back to committees on follow-up questions.</p> <p>Upon your approval, the documents will be transmitted to Public Safety, who coordinates the information and will send back to the committee. The response is due back by cob today, June 17.</p>			

Canada



Standing Committee on Public Safety and National Security (SECU)

June 2, 2016

Question:

Mr. Larry Miller: Very good. Glad to hear that. Just to continue a little bit on Mr. Di Iorio's question, Minister, you didn't really answer the question specifically to what is being done to make sure that information doesn't get out. We realize that your name and address may be simple information, but I'd just like to know exactly the process that is being used in as brief a time as you could.

Hon. Ralph Goodale: Let me just ask the President of the CBSA to comment.

Ms. Linda Lizotte-MacPherson (President, Canada Border Services Agency):
Thank you, Minister. There are a number of things that we're doing to ensure that privacy is protected. First of all, MOUs in place with the U.S. as the Minister said there is no derogatory information that will be exchanged it's simply basic tombstone information. As well the IT systems have a very tight security infrastructure built into them. We have been consulting and will continue to consult with the Office of the Privacy Commissioner as well. For example, in some earlier phases we did. With foreign nationals he had recommended that we put some signage up which we did.

So as we get feedback or any recommendations from the Privacy Commissioner we certainly will take those into consideration. Of course we're all required to complete a very comprehensive privacy impact assessment which would be shared with the Privacy Commissioner and that will be his opportunity to provide his feedback. So that would happen once the legislation is in play.

Mr. Larry Miller: Thank you, Ms. MacPherson. Can you tell me off the top of your head if you know what the cost is there? There's a cost to everything that we do and do you know the number off hand? Yes or no?

Ms. Linda Lizotte-MacPherson: I don't know the number specifically.

Mr. Larry Miller: I would be interested in getting that if we could, Mr. Chairman.

Ms. Linda Lizotte-MacPherson: We can certainly provide that.

RESPONSE

The entire Entry/Exit project consists of four components. Of the total project amount, \$78 million was used to build and maintain the Entry/Exit initiative.

OK



Comité permanent de la sécurité publique et nationale (SECU)

Le 2 juin 2016

Question:

M. Larry Miller: Je suis ravi de l'entendre. Monsieur le ministre, vous n'avez pas vraiment répondu à la question, à savoir ce qui est fait précisément pour nous assurer que les renseignements sont protégés. Nous comprenons que le nom et l'adresse d'une personne sont des renseignements de base, mais j'aimerais connaître exactement le processus en place.

L'hon. Ralph Goodale: Je vais laisser la présidente de l'ASFC vous répondre.

Mme Linda Lizotte-MacPherson (présidente, Agence des services frontaliers du Canada): Merci, monsieur le ministre. Nous prenons diverses mesures pour nous assurer de la protection des renseignements personnels. Premièrement, nous avons des protocoles d'entente avec les États-Unis. Comme le ministre l'a mentionné, aucun renseignement préjudiciable ne sera communiqué; ce sont tout simplement des renseignements de base. Par ailleurs, la sécurité des infrastructures des systèmes de TI est très étanche. Comme nous l'avons fait par le passé, nous continuerons de consulter le Commissariat à la protection de la vie privée. Par exemple, en ce qui a trait à certaines étapes du projet pilote antérieur relativement aux ressortissants étrangers, le commissaire avait recommandé d'installer des panneaux.

Nous tenons évidemment compte de toutes les recommandations et de tous les commentaires formulés par le commissaire à la protection de la vie privée. De plus, nous devons évidemment tous réaliser une évaluation détaillée des facteurs relatifs à la vie privée, qui est remise au commissaire à la protection de la vie privée. C'est à ce moment qu'il peut formuler des commentaires. Ce sera fait lorsque la mesure législative entrera en vigueur.

M. Larry Miller: Pouvez-vous me dire de mémoire si vous en connaissez le coût? Tout ce que nous faisons a un coût. Le connaissez-vous de mémoire?

Mme Linda Lizotte-MacPherson: Je ne le connais pas précisément.

M. Larry Miller: J'aimerais avoir cette information, si c'est possible.

Mme Linda Lizotte-MacPherson: Nous pouvons certainement faire parvenir cette information.

RÉPONSE

Le projet sur les entrées et les sorties se compose de quatre composants. 78 millions de dollars du montant total du projet, ont été utilisés pour construire et maintenir l'initiative des entrées et des sorties.



PROTECTED B / PROTÉGÉ B

CBSA/ASFC-16-

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Director General/ Directrice générale Arianne Reza			

Subject/Objet : Upcoming Preclearance Binder
Action/Mesure : For Information
BF/AR : 2016-06-07

Please find enclosed the legislative briefing binder for the Preclearance Act, 2016. While the Canada Border Services Agency (CBSA) worked with Public Safety (PS) to prepare all of the content, your approval is only being sought on the CBSA led materials:

1. Cargo Fact Sheet
2. Immigration Fact Sheet
3. Q's & A's (jointly prepared with PS)
4. Part II of the Clause by Clause

PS expects to finalize the binder by close of business Tuesday, June 7 2016.



Canada Border Services Agency Agence des services frontaliers du Canada

PROTECTED B / PROTÉGÉ B

CBSA/ASFC-16-02657

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Director General/ Directrice générale Arienne Reza								
Subject/Objet : Upcoming Preclearance Binder								
Action/Mesure : For Information								
BF/AR : 2016-06-07								
Please find enclosed the legislative briefing binder for the Preclearance Act, 2016. While the Canada Border Services Agency (CBSA) worked with Public Safety (PS) to prepare all of the content; CBSA led materials:								
<u>Tab 4:</u> Part II of the clause by clause <u>Tab 5:</u> Q's & A's (jointly prepared with PS) <u>Tab 6:</u> Factsheets ; Immigration & Cargo Preclearance								

FACT SHEET: CARGO

Cargo preclearance refers to conducting any examination, search, and inspection of goods in a Host Party territory for the purpose of ensuring that the entry of those goods into the territory of the Inspecting Party conform to the Inspecting Party's laws concerning customs, agriculture, public health and safety and other requirements relating to that entry and admission.

Cargo pre-inspection refers to conducting some of the steps for preclearance within the territory of the Host Country, with the remainder of the steps being conducted in the destination country.

Under the LRMA agreement, cargo preclearance and cargo pre-inspection would be permissible. The LRMA outlines that all new sites being considered for preclearance will need to meet terms and conditions and that cargo will only be eligible for preclearance at sites that have been identified and confirmed through the exchange of diplomatic notes. The Canada Border Services Agency (CBSA) is responsible for reviewing the feasibility of possible locations within the U.S. for Canadian preclearance, and the Preclearance Consultative Group is exploring the terms and conditions that would be required in order to pursue cargo pre-inspection and cargo preclearance pilot sites in the future.

Carrier Advance Data Information

The LRMA outlines that data on cargo must be reported within a prescribed manner and within prescribed timeframes. The LRMA specifically identifies that Canada shall approve any carrier's request for preclearance, if the carrier has maintained compliance with the requirements and met certain prescribed conditions regarding the type of information that must be provided, and how the information must be submitted to the CBSA.

Deny Preclearance

Under the LRMA, Inspecting Parties will be able to deny preclearance for goods and conveyances, that cannot be routed through or brought within the designated preclearance area, as well as deny preclearance, refuse admission, or prevent boarding on a carrier of goods destined to or transiting through its territory, consistent with the laws of the Inspecting Party.

Seizure of Goods

Under the preclearance process, Canada would still be able to seize goods. The LRMA allows Canada to inspect, examine, search and detain goods, and seize and cause the forfeiture of goods, with the caveat that seizures of a good would only be permissible if the good was not previously identified by the U.S. as being a good of interest, or, if the good is required for an administrative or judicial action as outlined in the LRMA.

Specifically, where the U.S. has made known explicitly to Canada that a good or goods, examined, inspected, or detained by Canada in a preclearance area or perimeter, contravene U.S. law regarding importation, exportation, possession, or handling of goods, or that otherwise constitute evidence of an offence under U.S. law, Canada is expected to transfer to the U.S., without delay, those goods. Should the U.S. not initiate an administrative or judicial action with respect to goods transferred to it, the U.S. will transfer the goods back to Canada which may, at that time, seize and or cause the forfeiture of those goods. The U.S. will dispose of the goods should Canada decline custody of them. The LRMA also places the obligation on Canada to ensure that goods that are seized during preclearance are subject to recourse procedures, consistent with the law of Canada.

Requiring Additional Examination

Within a preclearance area, the Inspecting Party retains the right to require a re-inspection (within the U.S. or in Canada) as it deems necessary of any goods that have been precleared. Further, within a preclearance perimeter, a preclearance officer may require that goods destined for their territory return to a preclearance area to ensure that the goods comply with the preclearance requirements.

Export Examination/Domestic Law

The Host Party's ability to conduct inspections, export examinations and post-clearance inspections within its own territory will not be affected by the implementation of the LRMA Agreement. The CBSA will still be able to enforce all relevant laws within its own territory, despite U.S. conducting preclearance operations at some ports of entry within Canada.

Minister's Qs&As

Agreement on Land, Rail, Marine and Air Transport Preclearance between the Government of Canada and the Government of the United States of America (The Agreement)

GENERAL

- Q1. What is preclearance?**
- Q2. What is pre-inspection?**
- Q3. What are the benefits of preclearance?**
- Q4. Why did we need to negotiate a new preclearance Agreement?**
- Q5. Will preclearance sites in Canada be subject to cost recovery?**
- Q6. May I have a copy of the Agreement?**
- Q7. May I have a copy of the bill that was introduced by Minister Goodale?**

TIMING

- Q8. When will the new Agreement take effect?**
- Q9. When will the new preclearance operations announced by Prime Minister Trudeau and President Obama in March be launched?**
- Q10. What is the status of U.S. legislation?**
- Q11. Are preclearance operations being planned for any other locations?**
- Q12. What changed from the current Air Transport Preclearance Agreement?**
- Q13. What will happen to the existing Air Transport Preclearance Agreement with the U.S.?**
- Q14. Will Canada be establishing preclearance operations in the U.S.?**
- Q15.**

DESIGNATION OF/ACCESS TO PRECLEARANCE AREA/PERIMETER

- Q16. What is the difference between a preclearance area and perimeter?**
- Q17. What is the process for designation/who can designate preclearance areas and perimeters?**
- Q18. Who will have access to the preclearance area?**
- Q19. What is the process for vetting employees who have access to a preclearance area?**
- Q20. What kind of information will be shared with the U.S. as part of the vetting process?**

OFFICER AUTHORITIES

- Q21. Why did Canada and the U.S. give preclearance officers greater authorities than what is in the current Preclearance Agreement?**

ARMING OF PRECLEARANCE OFFICERS

- Q22. Why are we letting U.S. preclearance officers carry firearms in Canada? Doesn't this impact our sovereignty?**
- Q23. Would U.S. CBP preclearance officers be able to carry sidearms in Canada?**

Q24. Under what authority can U.S. preclearance officers carry arms in Canada?

Q25. In Canada what constitutes a regulated item?

Q26. Have there been any incidents involving the use of a firearm by a CBSA border services officer?

COMPLIANCE WITH CANADIAN LAW

Q27. What law will U.S. preclearance officers administer?

Q28. Will CBSA officers conducting preclearance in the United States be bound by the Charter?

SEARCHES

Q29. What kind of searches will U.S. preclearance officers be able to perform? Is this different from the existing Act?

Q30. Under what grounds can a U.S. preclearance officer conduct a search?

Q31. Under what circumstances will the CBSA decline a U.S. preclearance officer's request for a strip search?

Q32. How does the Government of Canada intend to mitigate concerns in relation to U.S. preclearance officers conducting strip searches on Canadians in Canada?

Q33. What would be considered a reasonable time for responding to a request to conduct a strip search?

Q34. How many strip searches do U.S. preclearance officers conduct now?

Q35. How many strip searches do we anticipate are conducted in a preclearance area?

Q36. Will U.S. preclearance officers be permitted to perform strip searches of the opposite sex?

Q37. How will searches of transgender or intersexed persons be conducted?

Q38. Are U.S. preclearance officers permitted to touch a person's unclothed body during a strip search?

Q39. How are "pat down" and "strip search" being defined in the proposed *Preclearance Act*?

Q40. What is the CBSA policy in terms of confirming the identity of travellers wearing a niqab, hijab, or burqa?

WITHDRAWAL

Q41. Can people still withdraw from a preclearance area?

Q42. What authorities would be granted to preclearance officers with respect to travellers wishing to withdraw from preclearance operations?

Q43. What if the traveller is withdrawing because they know they are doing something illegal and do not wish to get caught?

Q44. Does a traveller who has completed the preclearance examination in Canada and entered the departure area of an airport need to report to the Canadian border services officers if they choose to withdraw?

Q45. Will refugee claims be processed in preclearance?

Q46. What if a person who tries to make a refugee claim and is told they cannot do so then seeks to enter Canada as a visitor instead?

Q47. Does the initial attempt to make a refugee claim in preclearance impact the foreign national's eligibility to make a claim in Canada or from abroad?

POWERS OF ARREST/DETENTION/TRANSFER/SEIZURE/FORFEITURE

Q48. Will Canadian preclearance officers in the U.S. be able to detain a person under a lower threshold than they would apply in Canada?

Q49. Can U.S. preclearance officers enforce U.S. criminal law in Canada? Will they have powers of arrest or detention?

Q50. Can a preclearance officer seize or accept forfeited or abandoned goods?

USE OF FORCE

Q51. Can U.S. preclearance officers exercise use of force?

POLICE OF JURISDICTION: PRESENCE/RESPONSE/ASSISTANCE

Q52. Why would there be a need for the continuous presence of armed Canadian law enforcement officers at certain U.S. preclearance operations in Canada?

Q53. What are the requirements for a timely law enforcement response?

Q54. Can U.S. preclearance officers request assistance from Canadian officers?

Q55. Will Canadian police officers have access to a preclearance area?

PROTECTIONS AND ACCOUNTABILITY

Q56. Would U.S. preclearance officers have immunity from Canadian law?

Q57. Why did you give armed U.S. preclearance officers criminal immunity?

Q58. How will investigations under the protections and accountability framework work? How will it change the current role of law enforcement officers?

Q59. Are the Preclearance Consultative Group and the bi-national council of senior Canadian and U.S. officials for the framework for protections and accountabilities the same thing?

PRIVACY

Q60. What is the impact of the new Agreement on privacy?

Q61. What are the new privacy impacts related to vetting?

Q62. What are the new privacy impacts related to withdrawal?

Q63. Would U.S. CBP preclearance officers be allowed to collect biometric information?

CARGO

Q64. Will this legislation allow for cargo preclearance?

Q65. Will Canada and the U.S. be making truck cargo pre-inspection operations at the Peace Bridge in Fort Erie, Ontario permanent?

Q65. Are there any plans to pursue cargo pre-inspection and/or cargo preclearance pilot sites in the future?

IMMIGRATION

Q66. How will having Canadian preclearance areas in the U.S. impact the immigration process for travellers to Canada, including Canadian citizens, permanent residents, protected persons and foreign nationals?

Q67. What happens to a traveller who is refused to proceed to Canada through a preclearance area in the U.S.? Can they proceed to a Canadian port of entry instead?

Q68. Will those who are refused to proceed to Canada through preclearance have access to any recourse mechanisms?

Q69. Could a resettled refugee to whom the Government of Canada issued a permanent resident visa be refused preclearance?

Q70. Won't permanent resident's right of entry to Canada be restricted given that they can be refused preclearance? What effect could this refusal to allow a permanent resident to proceed to Canada through preclearance have on their right to appeal at the Immigration and Refugee Board (IRB)?

REGULATIONS

Q71. Will any new regulations or regulatory amendments be required to support this proposed legislation?

GENERAL

Q1. What is preclearance?

A1. Preclearance is the process where border officers from an “inspecting country” carry out customs, immigration and related inspections in the “host country” to determine whether goods or people should be allowed to enter into the inspecting country.

In Canada, preclearance is currently conducted by U.S. preclearance officers in eight major airports:

1. Vancouver International Airport
2. Edmonton International Airport
3. Calgary International Airport
4. Winnipeg James Armstrong Richardson International Airport
5. Toronto Pearson International Airport
6. Ottawa Macdonald-Cartier International Airport
7. Montréal Pierre Elliott Trudeau International Airport
8. Halifax Stanfield International Airport

Canada does not currently conduct preclearance at any locations in the U.S.

Q2. What is pre-inspection?

A2. Pre-inspection is where only part of the preclearance process is undertaken by Inspecting Country officers in a Host Country (e.g. either immigration admissibility or primary inspection) and where additional screening is still undertaken when the travellers or goods reach the Host Country.

In Canada, pre-inspection is conducted by U.S. preclearance officers located at five sites in British Columbia (B.C.): Port Metro Vancouver, Prince Rupert Ferry Terminal, Vancouver Central Rail Station, Sidney Ferry Terminal, and the Victoria Ferry Terminal.

Q3. What are the benefits of preclearance?

A3. Preclearance is a border management tool that creates economic and security benefits for both countries:

- Economic:
 - Makes air travel more efficient, allowing 12M passengers to avoid lengthy customs lines in the U.S.
 - Helps increase the competitiveness of Canadian airports
 - Promotes economic growth of local economies by increasing tourism and jobs
 - Facilitates the co-location of US CBP and the CBSA in the territory of one country

- Security: Stops prohibited goods and travellers from entering the country by allowing preclearance officers to interdict such goods and travellers before they cross the border

Q4. Why did we need to negotiate a new preclearance Agreement?

A4. We needed to modernize the agreement because

- The old Agreement pre-dates the 9/11 aviation security context
- The old Agreement does not always reflect operational challenges
- There is strong market demand for expansion in all modes
- We need to establish legislative authority for pre-inspection operations in B.C.

The new Agreement will address these issues while allowing expansion of preclearance into all modes of transportation for both countries thereby creating greater economic and security benefits for Canada.

Q5. Will preclearance sites in Canada be subject to cost recovery?

A5. Currently, facility operators cover the costs of infrastructure and the U.S. covers the costs of preclearance operations (salaries).

Existing preclearance and pre-inspection facilities are protected from cost recovery. Cost recovery does not apply unless jointly agreed upon by both countries. For an increase in preclearance officers to support “natural growth” at these facilities, it is likely that these costs will need to be covered by the facility operator. Some air industry stakeholders have indicated that they are open to paying for preclearance services under these circumstances. In this respect, efforts are underway to jointly establish a cost recovery framework for additional U.S. preclearance resources as appropriate.

For new preclearance facilities in Canada, reimbursement for operations (e.g. salaries, benefits and relocation allowances for U.S. preclearance officers) will be covered by the facility operators up to the amount allowable by U.S. law and may vary by facility.

As under the existing air Agreement, all facility costs are the responsibility of the facility.

Q6. May I have a copy of the Agreement?

A6. Yes. [PS Media Relations has a copy of the signed agreement and will share it with any media that request it, as they have in the past.]

Q7. May I have a copy of the bill that was introduced by Minister Goodale?

A7. You can view the latest version of any bill introduced in Parliament by visiting this Web site: <http://www.parl.gc.ca/LegisInfo/AboutLegisInfo.aspx?Language=E&Mode=1>

[To be updated with the specific Web address once the bill has been posted.]

TIMING

Q8. When will the new Agreement take effect?

A8. The new Agreement will take effect with the exchange of diplomatic notes between Canada and the U.S. The diplomatic notes will set out the date on which the Agreement will come into force. The passage of implementing legislation is an important step towards ratification of the new Agreement.

Q9. When will the new preclearance operations announced by Prime Minister Trudeau and President Obama in March be launched?

A9. When it enters into force, the Agreement will provide the legal framework that will enable the expansion of preclearance operations to the locations announced by the Prime Minister and President on March 10, 2016.

Canada and the U.S. are committed to expanding preclearance to these new sites. However, expansion to these, or any other sites, will not be automatic. Any sites being considered will need to meet all of the terms and conditions of the Agreement, including the recovery of costs for the deployment of U.S. preclearance officers at new preclearance locations in Canada (and the recovery of the costs of deploying Canadian preclearance officers in the U.S.).

Q10. What is the status of U.S. legislation?

A10. The U.S. bill, the Promoting Travel, Commerce, and National Security Act of 2016, was introduced in both the Senate and House. The bill extends U.S. criminal jurisdiction extraterritorially to Department of Homeland Security and Department of Justice employees in Canada in order for the U.S. to implement the criminal liability provisions (Article 10) of the new Agreement. Existing U.S. preclearance law (Title 19) will be relied on for implementation of other provisions of the new Agreement. Passage of the bill will depend on the U.S. legislative process.

Q11. Are preclearance operations being planned for any other locations?

A11. The Prime Minister of Canada and President of the United States recently announced that preclearance will be expanded to Toronto Billy Bishop Airport, Jean Lesage Airport in Quebec City, Montreal Central Station and Rocky Mountaineer in British Columbia.

At this time there are no specific plans for other locations, however, when the Agreement enters into force, it will enable the establishment of new preclearance operations in any of the four modes of transportation. It will allow the market to propose operations when and where it makes sense – facilitating trade and travel, and creating economic benefits for Canadians.

The CBSA is reviewing the feasibility of possible opportunities for Canadian preclearance in the U.S.

Q12. What changed from the current Air Transport Preclearance Agreement?

A12. When it takes effect, the new Agreement will include the following changes:

- Enable preclearance in Canada or the U.S. in any mode of transportation.
- Include a shared criminal jurisdiction framework that is reciprocal.
- Provide Canadian and U.S. preclearance officers with the authorities necessary to effectively conduct preclearance in the other country.
- Enhance the Preclearance Consultative Group, which would provide greater rigour and accountability for overseeing the implementation of the Agreement.

Q13. What will happen to the existing Air Transport Preclearance Agreement with the U.S.?

A13. Once the new agreement comes into force the existing *Preclearance Act* will be repealed and the old Agreement will no longer apply. Until the new Agreement is ratified the existing Air Transport Preclearance Agreement remains in force.

Q14. Will Canada be establishing preclearance operations in the U.S.?

A14. Currently, Canada does not have any preclearance operations in the U.S.

Whether preclearance will be established in the U.S. will depend on a number of factors:

- economic benefits/competitiveness,
- traffic flows,
- geographic considerations (e.g. space constraints),
- national security or critical infrastructure considerations,
- requests of private facility operators and stakeholders,
- existing border infrastructure and
- financial implications.

DESIGNATION OF/ACCESS TO PRECLEARANCE AREA/PERIMETER

Q16. What is the difference between a preclearance area and perimeter?

A16. Preclearance Area: Preclearance officers can exercise the full powers conferred by the *Preclearance Act* in preclearance areas. A preclearance area will include:

- the conveyance and baggage handling areas;
- temporary back-up area for outages or malfunctions when in use (subject to facility capacity); and
- in the case of cargo preclearance, will include designated warehouses where cargo is stored, staged or processed.

Preclearance Perimeter: Preclearance officers can exercise limited authorities to avoid co-mingling of precleared and non-precleared travellers in the preclearance perimeter, which is essentially a demarcated, reasonable area adjacent to each conveyance.

Preclearance areas and perimeters can also be designated as temporal – providing preclearance officers with necessary authorities only during certain time periods in order to ensure that the preclearance area is sterile.

For example, in the air mode, a small bus may be used to transport travellers from the airport terminal to an airplane that is parked on the tarmac, away from the terminal. Once the airplane becomes stationed at the airport and the preclearance process begins, the airplane, bus and any corridors in between the terminal, the bus and the plane could be designated as part of the preclearance area. This means that from the time that travellers enter into the fixed preclearance area inside the terminal, to the time that travellers are boarded onto the airplane and it departs, preclearance officers have the authorities necessary to ensure a sterile process for the preclearance of those travellers and any goods in their possession.

Q17. What is the process for designation/who can designate preclearance areas and perimeters?

A17. Under s.4 of the proposed *Preclearance Act* the Governor in Council will designate a Minister or Ministers responsible to perform this function.

Prior to the designation or any re-designation of a preclearance area, the Government of Canada must consult with the facility operator and the Government of the United States and try to satisfy any U.S. operational requirements. Both countries will then confirm the designation or re-designation of a preclearance area through an exchange of diplomatic notes. The bill also lays out a number of minimum requirements for any designated area that is to be used for processing travellers, which must be adhered to unless otherwise agreed to by both countries.

Within these fixed locations, U.S. preclearance officers will have the powers detailed in the proposed bill. Designation also allows the Minister of Ministers to specify certain periods of the day when a fixed location will become a preclearance area. For example, at a train station, preclearance may only occur in the morning and afternoon. Rather than designate a portion of the station as being a permanent preclearance area, the Minister could designate a portion of the station as being a preclearance area during just the morning and afternoon hours of operation. Outside these hours, the location ceases to be a preclearance area and none of the authorities or obligations under this Act would apply during that time.

Q18. Who will have access to the preclearance area?

A18. Access to the preclearance area will be limited to U.S./Canada-bound travellers, the Inspecting Country's preclearance officers, the Host Country's police and border services officers for the purposes of exercising powers and performing duties and functions under the legislation. In Canada, the proposed *Preclearance Act* will also allow persons who are authorized by the Minister, or, subject to regulations, authorized by facility operator to have access to the preclearance area.

Q19. What is the process for vetting employees who have access to a preclearance area?

A19.

In the air mode, this requirement may be incorporated into the Transportation Security Clearance by Transport Canada. For other transportation modes (land, rail, marine), individual facility operators control access.

Q20. What kind of information will be shared with the U.S. as part of the vetting process?

A20. Name and date of birth will be shared with the U.S. for vetting purposes.

OFFICER AUTHORITIES

Q21. Why did Canada and the U.S. give preclearance officers greater authorities than what is in the current Preclearance Agreement?

A21. Canadian and U.S. preclearance officers were given the authorities necessary to effectively carry out preclearance in the other country.

The authorities granted in the Agreement will apply equally to Canadian preclearance officers working in the U.S. and U.S. preclearance officers carrying out preclearance in Canada.

ARMING OF PRECLEARANCE OFFICERS

Q22. Why are we letting U.S. preclearance officers carry firearms in Canada? Doesn't this impact our sovereignty?

A22.

The new Agreement authorizes preclearance officers to carry the same weapons and restraint devices that the Host Country's border officers are permitted to carry in the same operating environment. Canada and the U.S. are developing a protocol for preclearance officers to follow to ensure the safe transportation and storage of firearms and ammunition. These procedures will comply with all U.S. and Canadian laws and regulations, including the *Firearms Act*. Preclearance officers will also be provided with training to ensure familiarity with Host Country laws and policies and to ensure that preclearance officers are aware these apply in preclearance areas and perimeters.

Neither country's border services officers have greater authorizations for the use of firearms than the other country's own border services officers

Q23. Would U.S. CBP preclearance officers be able to carry sidearms in Canada?

A23. U.S. preclearance officers would be authorized to carry the same regulated items that CBSA border officers are permitted to carry in the same operating environment. That means that they would be able to carry a firearm in land, rail and marine preclearance operations, but not when pre-clearing air travel passengers.

CBSA border officers are not currently armed for screening commercial aircraft inside air passenger terminals, so U.S. preclearance officers would also not be armed. If CBSA officers are authorized to be armed in the future, U.S. preclearance officers would also be authorized to be armed.

Q24. Under what authority can U.S. preclearance officers carry arms in Canada?

A24. The proposed *Preclearance Act, 2016*, provides amendments to the *Criminal Code* which exempts U.S. preclearance officers from certain offences that would otherwise apply: to import, export, and possess firearms, and other regulated items, in the course of their duties. Also, in order to ensure there are clear rules in place, the new Agreement includes a provision stating written procedures will be mutually developed to ensure the safe transportation, carriage, and storage of regulated items within the host country. These are currently being drafted by Canadian and U.S. officials.

Q25. In Canada what constitutes a regulated item?

A25. In Canada defining a regulated item will be done in accordance with CBSA policy which includes a firearm (handgun), pepper spray, a defensive baton and handcuffs.

Q26. Have there been any incidents involving the use of a firearm by a CBSA border services officer?

A26. No, there have been no incidents of a firearms discharge towards a person since the inception of the CSBA's Arming Program. On average, there have been approximately 37 to 40 firearm drawings per year over the last three years across all lines of CBSA operations.

COMPLIANCE WITH CANADIAN LAW

Q27. What law will U.S. preclearance officers administer?

A27. A U.S. preclearance officer is only authorized to apply U.S. laws on immigration, the importation of goods, agriculture, and public health and safety when making admissibility decisions (i.e. deciding who and what can cross the U.S. border).

U.S. preclearance officers must exercise their powers and duties subject to Canadian law, including the *Canadian Charter of Rights and Freedoms*, the *Canadian Bill of Rights* and the *Canadian Human Rights Act*.

U.S. preclearance officers will not have the power to enforce criminal law nor do they have peace officer status meaning they cannot make arrests. All ‘coercive authorities’ including searches, detention and seizure are provided for in the proposed *Preclearance Act*.

Q28. Will CBSA officers conducting preclearance in the United States be bound by the Charter?

A28. Article II of the new Agreement stipulates that preclearance shall be conducted in a manner consistent with the laws and constitutions of both Parties, including the *Charter*. CBSA officers conducting preclearance in the U.S. would apply and enforce Canadian laws for the purpose of preclearance, as well as apply and enforce U.S. law necessary to carry out preclearance. CBSA officers would have to conduct themselves in accordance with applicable Canadian law and the authorities granted to them by the U.S. under the new Agreement.

SEARCHES

Q29. What kind of searches will U.S. preclearance officers be able to perform? Is this different from the existing Act?

A29. Similar to the old Agreement, under the proposed *Preclearance Act*, U.S. preclearance officers have the authority to conduct frisk searches for life and safety as well as concealed goods. Of note, the *Charter of Rights and Freedoms* (section 8 – the right to be secure against unreasonable search or seizure) applies to any search by preclearance officers. With limited exceptions, these searches must take place in the preclearance area.

Under the existing Agreement, for any other type of search, Host Country officers must conduct the search.

the
U.S can only conduct strip searches if CBSA declines or is unable to conduct the search within a reasonable time.

Intrusive body searches (i.e. a body cavity search or a medical x-ray search to identify or recover material evidence) will be conducted by the appropriate Canadian authority (medical practitioners), and must be conducted on consent.

Q30. Under what grounds can a U.S. preclearance officer conduct a search?

A30. To conduct a frisk search, the U.S. preclearance officer must have reasonable grounds to suspect that the traveller is concealing goods on their person or that the person has on their person anything that would present a danger to human life or safety.

A U.S. preclearance officer may detain a traveller bound for the U.S. for the purpose of a strip search if the officer has reasonable grounds to suspect that the travellers has on their person concealed goods or anything that would present a danger to human life or safety and the strip search is necessary for the purpose of conducting preclearance. Upon detaining a traveller for a strip search, the U.S. preclearance officer must immediately request that a CBSA border services officer conduct the search and advise of the grounds for detention. The border services officer may conduct the strip search if they have reasonable grounds to suspect that the travellers has on their person concealed goods or anything that would present a danger to human life or safety and the strip search is necessary for the purpose of conducting preclearance. The CBSA will provide clear direction to officers that searches are to be declined only under exceptional circumstances that must be justified. U.S. preclearance officers can only conduct strip searches if CBSA declines or is unable to conduct the search within a reasonable time.

All searches conducted by U.S. preclearance officers will be subject to the same Canadian legal requirements that apply to CBSA officers conducting personal searches domestically.

Q31. Under what circumstances will the CBSA decline a U.S. preclearance officer's request for a strip search?

A31. Given that the CBSA is an operational agency, there may be exceptional circumstances that, on rare occasions, do not allow a CBSA officer to conduct the search.

It is difficult to predict the exact details of every operational situation that may arise which would preclude the CBSA from performing a search, but the clear intention is for the CBSA to perform the vast majority of these searches and every effort will be made to keep exceptions to a minimum.

Q32. How does the Government of Canada intend to mitigate concerns in relation to U.S. preclearance officers conducting strip searches on Canadians in Canada?

A32. CBSA officers will respond to search requests on behalf of US preclearance officers whenever possible and only decline under exceptional circumstances.

Any strip searches undertaken by U.S. preclearance officers will be subject to a high level of operational scrutiny. The U.S. will have to document the basis for each partial body search and provide Canada with a summary of its purpose, outcome and circumstances. The Preclearance Consultative Group will jointly review implementation of strip search authorities.

Q33. What would be considered a reasonable time for responding to a request to conduct a strip search?

A33. The length of time it takes to respond to a request to conduct a strip search will vary depending on the mode (air, marine, rail or land) and the size of the preclearance operation. Not all sites are co-located and some sites could be small or in remote locations. As well, U.S. preclearance and CBSA operations at certain locations are not always concurrent and officers are not necessarily on shift at the same time. For example, U.S. preclearance officers may pre-clear an outgoing ferry late at night or early in the morning after the CBSA has already processed the inbound traffic. The distance that the officer has to walk, drive or travel by boat will inform what is defined as “reasonable time” at each location.

Q34. How many strip searches do U.S. preclearance officers conduct now?

A34. U.S. preclearance officers are currently not permitted to conduct strip searches in Canada.

Q35. How many strip searches do we anticipate are conducted in a preclearance area?

A35. While no precise statistics exist on the percentage of passengers subjected to strip searches, based on CBSA’s search rate at the eight air preclearance sites, the CBSA estimates that an extremely small number of passengers would be subjected to this form of search.

Current estimates on the number of times the CBSA performs strip searches on behalf of U.S. preclearance officers range from 5 to 15 times a year per airport. The number of searches performed on behalf of the U.S. preclearance officers per year, per airport is not expected to change under the new Agreement.

Q36. Will U.S. preclearance officers be permitted to perform strip searches of the opposite sex?

A36. No. U.S. preclearance officers in Canada will follow CBSA policy for such searches as there is no legislative exception provided for this in the bill. CBSA policy outlines that the officers performing strip searches must be the same sex as the person being searched. (There are exceptions for transsexual or intersexed persons).

Q37. How will searches of transgender or intersexed persons be conducted?

A37. The CBSA procedures on how border service officers are to conduct personal searches of transgender or intersexed persons are in accordance with Canadian human rights jurisprudence. The procedures are to be followed whenever operationally feasible and to the greatest extent possible.

Should a situation arise where a strip search is required on a transgender or intersexed person, the CBSA must provide the individual with a choice of the sex of the border services officer who will conduct the personal search.

The following options will be available to the traveller:

- male BSOs only
- female BSOs only
- a two-stage strip search

A two-staged strip search is conducted by two sets of border service officers, the first set completes the search of the upper body while leaving the lower body clothed. The individual is then permitted to fully dress, and is turned over to a second set of border services officer of the opposite sex to conduct the search of the lower body, while the upper body remains clothed. The individual being searched will be fully observed at all times during the turnover from the first set of border service officers to the second set of border service officers to ensure that continuity of any potential evidence is maintained throughout the search process.

Q38. Are U.S. preclearance officers permitted to touch a person's unclothed body during a strip search?

A38. No. The new Agreement defines a strip search, as the removal of clothing and a visual inspection of a person's unclothed or partially unclothed body.

Q39. How are “pat down” and “strip search” being defined in the proposed *Preclearance Act*?

A39.

Frisk search means a search by hand or technical means of a person's clothed body.

Strip search means a visual inspection of a person's unclothed or partially clothed body.

Q40. What is the CBSA policy in terms of confirming the identity of travellers wearing a niqab, hijab, or burqa?

A40. Officers will make all reasonable efforts, where possible, to accommodate the religious and cultural sensitivities of travellers entering Canada while satisfying safety and security requirements.

Offices will follow specific procedures whenever operationally feasible and will make every effort to shield the traveller from public view. The traveller is not required to remove her veil completely, but both edges of her face must be clearly visible, including ears, frontal hair and any other distinguishing marks. She has the option of having a female officer verify her identity

and take her photograph and if no female officer is available, the officer may authorize any suitable female to perform the verification and take the photograph.

WITHDRAWAL

Q41. Can people still withdraw from a preclearance area?

A41. Yes. Travellers can leave the preclearance area but questioning by preclearance officers will be allowed to mitigate concerns about border probing (exploring for potential gaps in border security).

Q42. What authorities would be granted to preclearance officers with respect to travellers wishing to withdraw from preclearance operations?

A42. Travellers are allowed to withdraw from preclearance areas. However, they would be required to identify themselves to the preclearance officer, answer questions as to why they wish to withdraw and comply with any requests that a preclearance officer is authorized to make of a withdrawing person. For instance, they would also be required to present photo ID, or to have their photo taken by the preclearance officer if they do not have photo ID to present or if their photo ID is not recognizable. They would not be required to provide biometric information once they have indicated that they wish to withdraw. If someone intends to cross the border, border officers have a right to know why they would suddenly chose to reverse that intent.

If a preclearance officer has reasonable grounds to suspect that the withdrawing person has committed an offence under Host Country law, the officer is able to detain the person for the purposes of a search and to perform non-intrusive inspections of conveyances.

Q43. What if the traveller is withdrawing because they know they are doing something illegal and do not wish to get caught?

A43. In the instance where a preclearance officer has reasonable grounds to suspect that the withdrawing traveller has committed an offence, a U.S. preclearance office can conduct a frisk search if they have reasonable grounds to suspect that the traveller is concealing goods on their person or have on their person anything that would present a danger to human life or safety.

A U.S. preclearance officer can also detain the traveller for the purpose of a strip search if the officer has reasonable grounds to suspect that the traveller has on their person concealed goods or anything that would present a danger to human life or safety and the strip search is necessary for the purpose of maintaining the security of or control over the border. Upon detaining a traveller for a strip search, the U.S. preclearance officer must request that a CBSA border services officer conduct the search as soon as feasible and advise of the grounds for detention. The CBSA will provide clear direction to officers that searches are to be declined only under exceptional circumstances.

All searches conducted by U.S. preclearance officers will be subject to the same Canadian legal requirements that apply to CBSA officers conducting personal searches domestically.

Q44. Does a traveller who has completed the preclearance examination in Canada and entered the departure area of an airport need to report to the Canadian border services officers if they choose to withdraw?

A44. The traveler may be subject to examination by CBSA depending on the stage in the preclearance process they had reached when they made the decision to withdraw.

Q45. Will refugee claims be processed in preclearance?

A45. No. A traveller who attempts to make a claim for refugee protection (“refugee claim”) at preclearance will be advised that they cannot make a claim to preclearance officers and will be counselled on the proper process to make a claim from outside of Canada. Such an attempt will not preclude the foreign national from making a claim for refugee protection in the future and they will be permitted to withdraw from preclearance.

This does not impact resettled refugees who have been issued a visa abroad for the purpose of becoming a permanent resident of Canada.

Q46. What if a person who tries to make a refugee claim and is told they cannot do so then seeks to enter Canada as a visitor instead?

A46. Should a person choose not to withdraw from preclearance and continue to seek to enter Canada as a temporary resident, they will be subject to a complete admissibility exam, which would be conducted in the same manner as for any other foreign national based on all available information.

Q47. Does the initial attempt to make a refugee claim in preclearance impact the foreign national's eligibility to make a claim in Canada or from abroad?

A47. No. An attempt to make a claim for refugee protection at a preclearance area will not affect an individual’s future claim. They will be permitted to withdraw from preclearance, and would not be barred from making a future claim for refugee protection at a conventional port of entry only because they had tried to make a refugee claim in a preclearance area.

POWERS OF ARREST/DETENTION/TRANSFER/SEIZURE/FORFEITURE

Q48. Will Canadian preclearance officers in the U.S. be able to detain a person under a lower threshold than they would apply in Canada?

A48. Yes. U.S. law gives Canadian officers working in the U.S. the authority to detain and transfer any person that the officer reasonably suspects has committed an offence under U.S. law or presents a danger to human life or safety.

U.S. law will also permit the officer to detain and transfer a person to a U.S. law enforcement officer for the purpose of a monitored bowel movement, strip search, or to bring the traveller to a medical facility for the purposes of a body cavity search or an x-ray.

Additionally, if the officer reasonably suspects that a traveller seeking to withdraw has committed an offence under U.S. law, the Agreement provides the preclearance officer with authority to detain that traveller to undergo further questioning and additional searches, and if necessary, to transfer that person to a U.S. law enforcement officer.

Canadian officers working in preclearance in the U.S. would not have the power to arrest within U.S. territory. The Canadian officer would have only the power to detain and transfer to a U.S. law enforcement officer, who could in turn arrest the individual.

Q49. Can U.S. preclearance officers enforce U.S. criminal law in Canada? Will they have powers of arrest or detention?

A49. No. A U.S. preclearance officer is only authorized to apply U.S. laws that relate to the importation of goods and to the entry of people to the U.S. (i.e. customs and immigration laws).

U.S. preclearance officers are not provided with peace officer status, they will not be able to enforce U.S. criminal law, nor will they have the power to arrest on Canadian soil.

A preclearance officer may detain an individual for the purpose of a search based on reasonable grounds to suspect.

In situations requiring an arrest to be made, the U.S. preclearance officer would detain the individual, based on reasonable grounds to believe, until a Canadian law enforcement officer arrives. Transfer of the individual is to be done without undue delay.

These authorities would be reciprocal for Canadian preclearance officers in the U.S.

Q50. Can a preclearance officer seize or accept forfeited or abandoned goods?

A50. The new Act provides for the authority to seize or accept forfeited or abandoned goods in a manner consistent with U.S. laws, however, in certain cases where the Minister provides notice or where the U.S. preclearance officer suspects the goods constitute evidence of an offence they must be provided to Canadian authorities. Regulations will also provide obligations on how goods are seized, transferred and returned.

These authorities would be reciprocal for Canadian preclearance officers in the U.S.

USE OF FORCE

Q51. Can U.S. preclearance officers exercise use of force?

A51. Yes. However, the new Act permits a preclearance officer to use only as much force as necessary, under reasonable grounds.

U.S. preclearance officers must not use force that is intended or is likely to cause death or grievous bodily harm, unless the officer has reasonable grounds to believe that force is necessary for self-preservation or the preservation of anyone from death or grievous bodily harm.

These authorities would be reciprocal for Canadian preclearance officers in the U.S.

POLICE OF JURISDICTION: PRESENCE/RESPONSE/ASSISTANCE

Q52. Why would there be a need for the continuous presence of armed Canadian law enforcement officers at certain U.S. preclearance operations in Canada?

A52. In any preclearance location where preclearance officers are not authorized to carry firearms, the new Agreement would require that the Host Country facility ensure that an armed law enforcement officer be present during the Inspecting Country's hours of operations in case they require assistance.

Since U.S. preclearance officers would not be authorized to carry firearms in Canadian airports, airport authorities would be responsible for ensuring that a Canadian law enforcement officer is on duty during preclearance hours of operation and available to assist, if required.

Currently, there is an armed law enforcement presence at all eight Canadian airports with U.S. preclearance operations.

Q53. What are the requirements for a timely law enforcement response?

A53. A statutory timeframe for what constitutes a timely law enforcement response has not been established, however the federal government intends on working with the law enforcement community to identify the best method for operationalizing this requirement.

As well, the new Agreement stipulates that each preclearance operation will work with the police of jurisdiction to establish procedures for engagement.

Q54. Can U.S. preclearance officers request assistance from Canadian officers?

A54. Yes. The new Act states that a Canadian officer may, for the purpose of maintaining public peace, respond to requests by U.S. preclearance officers to:

- Remove a traveller from a preclearance area
- Deliver a traveller to a preclearance area
- Assist the U.S. preclearance officer in the exercise of their powers and performance of their duties and functions.

These authorities would be reciprocal for Canadian preclearance officers in the U.S.

Q55. Will Canadian police officers have access to a preclearance area?

A55. Yes. In Canada, border services officers and police officers will have access to preclearance areas for the purposes of exercising their powers and duties.

PROTECTIONS AND ACCOUNTABILITY

Q56. Would U.S. preclearance officers have immunity from Canadian law?

A56. No, U.S. preclearance officers will be required to comply with Canadian law.

However, similar to the current *Preclearance Act* the new Act provides U.S. preclearance officers with immunity from civil and administrative jurisdiction while in the performance of official duties.

As well, the new Act establishes a shared criminal jurisdiction framework which is reciprocal.

Generally speaking, the Inspecting Party will have primary criminal jurisdiction over its preclearance officers for acts committed in the performance of the officer's official duties while the Host Party will exercise primary criminal jurisdiction over acts committed by preclearance officers when they are off duty and commuting to and from work.

If a U.S. preclearance officer contravenes a Canadian law in Canada:

- Canada would exercise primary jurisdiction over acts committed by U.S. preclearance officers not in the performance of official duties (e.g. while off duty including travelling to and from work).
- Canada would also exercise primary jurisdiction over serious cases of on-duty conduct, notably cases of murder, aggravated sexual assault and terrorism, where U.S. officials reviewed the incident and agreed such charges were merited under U.S. law and Canada asked the U.S. to waive its jurisdiction.
- Where allegations related to a U.S. preclearance officer involve death, grievous bodily harm, or sexual assault involving fear of death or serious injury, Canada can require the U.S. to submit the case to its prosecutorial authorities for review.
- Canada can also ask for “sympathetic consideration” and request that the U.S. waive its jurisdiction if the circumstances warrant. For example, the nature and severity of the offence and the impact on victims would have to be taken into consideration.
- As the Inspecting Party, the U.S. will have sole discretion in deciding if an act “was carried out in the performance of official duties” or “was directly related to facilitating activities undertaken pursuant to the new Agreement.” This decision determines which country has the right to exercise primary jurisdiction over the preclearance officer.

U.S. preclearance officers would not be immune from criminal liability for an act committed in Canada, rather, the responsibility for holding them to account would rest with the country exercising jurisdiction (as described above).

To implement this new criminal liability framework, Part 3 of the new Act makes amendments to the *Criminal Code* to provide a stay of proceedings against a U.S. preclearance officer when the Government of the United States provides notice under paragraph 14 of Article X of the LRMA.

Q57. Why did you give armed U.S. preclearance officers criminal immunity?

A57.

While the framework is new for law enforcement officers, it is not an entirely new approach in addressing criminal liability for foreign officials operating in Canada where arrangements provide varying degrees of privileges and immunities to diplomatic, consular and military officials (e.g. *Visiting Forces Act, Foreign Missions and International Organizations Act*).

It is important to keep this new framework in perspective. In the history of air preclearance, we only know of a few reported case of a U.S. preclearance officer being prosecuted in

Canada. One such case was for tobacco smuggling while off-duty. Under the new Agreement, Canada would retain jurisdiction over such an offence.

Q58. How will investigations under the protections and accountability framework work? How will it change the current role of law enforcement officers?

A58. Canadian police have exclusive responsibility for the investigation of an alleged criminal offence in Canada. The investigation is carried out pursuant to the requirements of Canadian law, notwithstanding the possibility or probability that the U.S. may exercise its primary jurisdiction.

Our plan is to work with the law enforcement community to develop procedures on how investigations will work in practice, especially for cases where the U.S. may exercise primary jurisdiction.

Q59. Are the Preclearance Consultative Group and the bi-national council of senior Canadian and U.S. officials for the framework for protections and accountabilities the same thing?

A59. No, they are not. The Preclearance Consultative Group is the governing body for preclearance operations in Canada and the U.S. It would consult on a regular basis to review performance and resolve any issues related to the implementation of the Agreement. (Ref. Section XII, paragraphs 2 and 3 of the Agreement)

The bi-national council of senior Canadian and U.S. officials would facilitate and monitor specifically the implementation of the framework for protections and accountabilities. They would meet on a regular basis to discuss, amongst other things, disposition of cases and procedural issues related to the framework. (Ref. Section X, paragraph 22 of the Agreement)

PRIVACY

Q60. What is the impact of the new Agreement on privacy?

A60. The proposed Preclearance Act imposes the conditions under which biometric information can be obtained from travellers or persons seeking to withdraw and sets the thresholds that must be reached before a preclearance officer can conduct a search. For example, the preclearance officer must have reasonable grounds to suspect that a traveller has on their person concealed goods before undertaking a frisk search. Except for new provisions related to vetting of workers and withdrawal by passengers, in terms of information sharing between Canadian and U.S. authorities information collected under the LRMA will be done in a manner similar to the existing framework under the current *Preclearance Act*, which states that information collected for preclearance purposes shall be treated in accordance with applicable laws of the U.S. However information is to be collected and treated in a manner consistent with Canadian law

including the *Canadian Charter of Rights and Freedoms*, the *Canadian Bill of Rights* and the *Canadian Human Rights Act*.

Q61. What are the new privacy impacts related to vetting?

A61. The new Agreement provides for U.S. authorities to have the opportunity to share derogatory information on persons (i.e. employees) seeking unescorted access to a preclearance area in Canada, and for that information to be considered as part of the process of making a decision about whether to provide a particular employee with such access to the preclearance area. However, Canada will have the final decision on whether access is provided.

A reciprocal process will need to be established for Canadian facilities in the U.S. However the CBSA will only collect from the U.S. the personal information that it needs in order to vet employees who have access to a preclearance area in the U.S.

An information sharing arrangement will be drafted that will be subject to the Beyond the Border Action Plan Privacy Principles as well as each country's applicable privacy laws. A Privacy Impact Assessment will be required to assess the privacy impact of the provision to share information between Canada and the U.S. to vet workers accessing preclearance areas.

Q62. What are the new privacy impacts related to withdrawal?

A62. Under the current *Preclearance Act*, persons wishing to withdrawal from a preclearance area may do so without providing information to the U.S. preclearance officer. Under the new Act, travellers can still leave the preclearance area but questioning by preclearance officers will be allowed to mitigate concerns about border probing. U.S. preclearance officers can also obtain a picture of the traveler, conduct frisk searches for health and safety, and perform non-intrusive inspections of conveyances. If a preclearance officer has reasonable grounds to suspect that the withdrawing person has committed an offense under host country law, the officer is able to detain that traveler to undergo future questioning and searches.

Q63. Would U.S. CBP preclearance officers be allowed to collect biometric information?

A63. Yes, as is currently the case, U.S. preclearance officers would be allowed to collect the same information from travellers in Canada – in the preclearance area and for the purposes of verifying a travellers identify for preclearance only – as is collected by U.S. CBP border officers at a regular border crossing in the U.S.

However, no biometric information may be collected once the traveller indicates they would like to withdraw.

Canada would also be able to collect biometric information in the US in a similar manner.

CARGO

Q64. Will this legislation allow for cargo preclearance?

A64. The new Agreement provides the overarching framework for preclearance, including with respect to cargo. This legislation provides the required Canadian legal authority for U.S. preclearance officers to conduct cargo preclearance in Canada and for Canadian preclearance officers to conduct cargo preclearance in the U.S.

In the new Act, there is no distinction between cargo preclearance or passenger preclearance, instead the authorities provided in the new Act would apply to both.

However, reciprocally, the U.S. also needs to ensure that required U.S. legal authority exists to conduct cargo preclearance.

Q65. Will Canada and the U.S. be making truck cargo pre-inspection operations at the Peace Bridge in Fort Erie, Ontario permanent?

A. A decision on the future of pre-inspection activities at this, or any other, location has not yet been made. The Canada–U.S. Preclearance Consultative Group is exploring the terms and conditions that would be required to pursue cargo pre-inspection and/or cargo preclearance pilot sites in the future.

Q65. Are there any plans to pursue cargo pre-inspection and/or cargo preclearance pilot sites in the future?

A. On March 10, 2016, Canada and the U.S. expressed their intention to explore the terms and conditions necessary to pursue cargo pre-inspection and/or cargo preclearance pilot sites in the future. The Canada–U.S. Preclearance Consultative Group is undertaking this work. A decision on the future of pre-inspection/preclearance activities at this, or any other, location has not yet been made.

IMMIGRATION

Q66. How will having Canadian preclearance areas in the U.S. impact the immigration process for travellers to Canada, including Canadian citizens, permanent residents, protected persons and foreign nationals?

A66. The vast majority of travellers, including Canadian citizens, permanent residents, protected persons and foreign nationals will be allowed to proceed through preclearance and will not be required to report again to immigration officials once in Canada. For the most part, immigration processing at preclearance areas in the U.S. will continue to operate as it does today at Canadian

ports of entry. All individuals who are currently subject the *Immigration and Refugee Protection Act* (IRPA) will continue to be examined under the IRPA at preclearance areas. Those who meet all IRPA requirements will be authorized to proceed to visit or work or study in Canada and those who are coming to Canada to become permanent residents may be granted permanent resident status in preclearance areas.

As Canadian citizens cannot be found inadmissible to Canada for any provisions under IRPA, they cannot be refused entry to Canada at any type of port of entry for immigration related reasons. However, all individuals, including Canadian citizens, remain subject to the laws of the United States and any other law of Canada in effect in the preclearance area.

Q67. What happens to a traveller who is refused to proceed to Canada through a preclearance area in the U.S.? Can they proceed to a Canadian port of entry instead?

A67. Officers may refuse to allow a traveller to proceed to Canada through preclearance, for example, on grounds of inadmissibility under the *Immigration and Refugee Protection Act*. The officer would advise the traveller of the reason for the refusal and give the traveller a report indicating the reasons for refusing preclearance on admissibility grounds. In all cases where a report is issued, judicial review of the officer's decision to refuse will be available.

In cases where an offence is committed under US law, or the person presents a danger to human life or safety, the officer can detain and transfer to US law enforcement.

The preclearance decision is simply a refusal to allow the traveller to proceed to Canada through preclearance. It does not result in a removal order or loss of status. It also does not prevent the person from seeking to enter Canada at a regular port of entry in future. Any future appearance by the individual at a regular port of entry would result in a fresh assessment of admissibility.

Q68. Will those who are refused to proceed to Canada through preclearance have access to any recourse mechanisms?

A68. Judicial review of preclearance refusal decisions will be available.

Q69. Could a resettled refugee to whom the Government of Canada issued a permanent resident visa be refused preclearance?

A69. It would be rare that a resettled refugee who had been pre-screened for immigration to Canada would be refused preclearance on grounds that they are inadmissible under immigration

law. This is because full screening for inadmissibility takes place before the visa is issued. However, they could be refused preclearance if, for example, new information relating to inadmissibility comes to light after the visa is issued.

Q70. Won't permanent resident's right of entry to Canada be restricted given that they can be refused preclearance? What effect could this refusal to allow a permanent resident to proceed to Canada through preclearance have on their right to appeal at the Immigration and Refugee Board (IRB)?

A70. In limited cases, officers may refuse to permit certain permanent residents from proceeding to Canada through preclearance. Permanent residents have only a qualified statutory right to enter Canada, and the Bill will limit that statutory right for those permanent residents in a preclearance area who are inadmissible on prescribed grounds.

All individuals who are refused permission to proceed through preclearance will have access to judicial review to challenge the officer's decision. However, because the decision is rendered outside Canada and does not result in a removal order, the IRB is not involved in the process.

If a permanent resident is refused or withdraws from preclearance and otherwise travels to a Canadian port of entry and is reported and referred for an inadmissibility hearing, all access to recourse mechanisms for inland decisions, including rights of appeal to the IRB, will continue to exist as they do today. Since being refused to proceed to Canada through preclearance will not result in a removal order, it will also not result in the permanent resident losing their status.

REGULATIONS

Q71. Will any new regulations or regulatory amendments be required to support this proposed legislation?

A71. Yes. If the proposed legislation is passed by Parliament, regulations will be required for the implementation of the legislation. For example:

- Regulations to authorize persons or categories of persons to have access to preclearance areas, and to establish conditions for that access; and
- Regulations to authorize how detained goods will be disposed of.



Canada Border
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PROTECTED B

For Information

POSTAL MODERNIZATION UPDATE AND WAY FORWARD

For the President

PURPOSE

To update you on the current state of issues at the outline and to

ISSUE

You will be meeting with Mr. Deepak Chopra, President and Chief Executive Officer of the Canada Post Corporation (CPC), on October 5, 2016. The meeting represents an

BACKGROUND

The October meeting will be a follow-up to your meeting with Mr. Chopra on June 1, 2016.

CURRENT STATUS

As you are aware, the

Canada

CONSIDERATIONS

In comparison to CBSA operations,

ACTION PLAN

As outlined in the following document, the

- ○
- ○
- ○
- ○
- ○
- ○
- ○

NEXT STEPS

We are scheduled to meet to discuss this issue in more detail on August 24, 2016.

Martin Bolduc, Vice-President
Programs Branch

ATTACHMENT:

1. Postal Modernization Action Plan

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TAB 1 AGENDA

TAB 2 SCENARIO NOTE

TAB 3 ANNOTATED AGENDA

TAB 4 CBSA POSTAL PROCESSING TIMES

TAB 5 CBSA INTERNATIONAL MAIL PROCESSING FLOW

TAB 6 COMPARISON OF CANADIAN AND US POSTAL PROCESSES

TAB 7 TRACK MY PASSAGE MESSAGING AVAILABLE ON CPC'S WEBSITE

President's Office time stamp / Timbre dateur du bureau de la présidente



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frontaliers du Canada

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CBSA/ASFC-16-02981

ROUTING SLIP / BORDEREAU D'ACHEMINEMENT

ACTION REQUIRED/ MESURE REQUISE			
Name and telephone number/ Nom et numéro de téléphone	Initials and date / Initiales et date	Action	Information
President/Présidente Linda Lizotte-MacPherson		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Executive Vice-President/ Première vice-présidente Nada Semaan		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vice-President/ Vice-président Martin Bolduc	23 AUG 24 2016	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Associate Vice-President/ Vice-président associé Peter Hill		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Director General/ Directrice générale Megan Imrie			
Subject/Objet : Postal Update August 2016			
Action/Mesure : For approval / Pour approbation			

Please find enclosed answers to your questions regarding the upcoming meeting with Mr. Deepak Chopra, President and Chief Executive Officer of Canada Post Corporation (CPC), scheduled for October 2016.

An updated briefing package will be provided to you prior to the meeting.

CBSA VP/AVP - Programs Branch
RECEIVED/REÇU

23 AOUT 2016

ASFC VP/VPD - Direction générale des Programmes

1) Updated the list of participants to limit the number of CBSA representatives:

CPC Participants (TBC)

Mr. Deepak Chopra, President and Chief Executive Officer

Ms. Mary Traversy, Chief Operating Officer

CBSA Participants (TBC)

Ms. Linda Lizotte-MacPherson, President

Ms. Nada Semaan, Executive Vice-President

Mr. Peter Hill, Associate Vice-President, Programs Branch

Ms. Caroline Xavier, Vice-President, Operations Branch

2) What are the

now since

3) Would like to understand

In comparison to CBSA operations,

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TAB 7 TRACK MY PASSAGE MESSAGING AVAILABLE ON CPC'S WEBSITE

- Lp does NOT need to attend - We
→ limit one member if there
are only 2 for CPC.
- What are volumes now at daily
with manual process.
see questions or note present +

§ I would like us to look at
a diff. risk

e.g. by like

– Action Plan –

OBJECTIVE

SHORT TERM (FALL 2016)

The focus of the short term action plan

In order for the CBSA to continue

Action Item	Comments	Target Date

Action Item	Comments	Target Date

Ross, Krista

From: DGO-CPD / ODG-CPSC (CBSA/ASFC)
Sent: September 2, 2016 09:23 AM
To: Blanchard, NathalieX
Cc: Charron, Stephanie; Fifield, William; Carboneau, Alex; Mousseau, Pauline
Subject: RE: ccm 2981 - Postal update August 2016.

Good morning.,

Please find below our response to the comment on

as approved by the DG.

Question:

Response:

Should you require additional information, please advise.

Ted

From: Blanchard, NathalieX
Sent: August 31, 2016 5:15 PM
To: DGO-CPD / ODG-CPSC (CBSA/ASFC)
Cc: Charron, Stephanie; Fifield, William; Carboneau, Alex; Mousseau, Pauline
Subject: ccm 2981 - Postal update August 2016

See President's question - provide the information via email

BF Friday 10:00

Nathalie Blanchard

Chef de Cabinet du VP, direction générale des programmes
Agence des services frontaliers du Canada
Nathaliex.Blanchard@cbsa-asfc.gc.ca /tél.: 613-954-7527

Chief of staff for VP, Programs Branch
Canada Border Services Agency
Nathaliex.Blanchard@cbsa-asfc.gc.ca / Tel: 613-954-7527



Canada Border Services Agency Agence des services frontaliers du Canada

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ACTION REQUIRED/ MESURE REQUISE			
Name and telephone number/ Nom et numéro de téléphone	Initials and date / Initiales et date	Action	Information
President/Présidente Linda Lizotte-MacPherson		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Executive Vice-President/ Première vice-présidente Nada Semaan		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vice-President/ Vice-président Caroline Xavier		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Vice-President/ Vice-président Martin Bolduc		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Associate Vice-President/ Vice-président associé Peter Hill		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Director General/ Directrice générale Megan Imrie Tel. /Tél. : (613) 954-6431			
Subject/Objet : Postal Update August 2016 Action/Mesure : For approval / Pour approbation			
<p>Included is a briefing note to update the President of n advance of her meeting with Peter Hill scheduled for August 24, 2016.</p> <p>Also included is the updated package for the President's upcoming meeting with Mr. Deepak Chopra, President and Chief Executive Officer of Canada Post Corporation (CPC), scheduled for October 2016.</p> <p>Tab 1: Agenda Tab 2: Scenario Note Tab 3: Annotated Agenda</p> <p>Tab 7: Track My Package Messaging Available on CPC's Website.</p> <p>Docket prepared by/préparé par: Commercial Program Performance and Reporting Division</p>			



AGENDA

Canada Border Services Agency (CBSA) – Canada Post Corporation (CPC)
Senior Management Meeting

October , 2016 – 10:00 a.m. – 11:00 a.m. (TBC)
 191 Laurier Avenue West, 6th Floor, Canada Boardroom

Time	Details	Purpose	Presenter(s)
5 min	1. Opening Remarks <ul style="list-style-type: none"> • Follow-up from 		CBSA: Linda Lizotte-MacPherson CPC: Deepak Chopra
30 min		Receive updates from CPC	CPC: Deepak Chopra and CPC Operations CBSA: Operations, ISTB and Programs
20 min			CBSA: TBC (Operations and Programs) CPC: Operations
5 min	4. Closing Remarks		CBSA: Linda Lizotte-MacPherson CPC : Deepak Chopra



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SCENARIO NOTE FOR THE PRESIDENT

Meeting with Mr. Deepak Chopra, President and Chief Executive Officer of Canada Post Corporation

**Wednesday October , 2016, 10:00 a.m. – 11:00 a.m. (TBC)
191 Laurier Ave. West, 6th Floor, President's Boardroom**

FUNCTION

You are meeting with Mr. Deepak Chopra, the President and Chief Executive Officer of the Canada Post Corporation (CPC) on Wednesday August 24, 2016 from 10:00-11:00 am.

OBJECTIVE

This will be a

EXPECTED PARTICIPANTS

CPC Participants (TBC)

Mr. Deepak Chopra, President and Chief Executive Officer
Ms. Mary Traversy, Chief Operating Officer

CBSA Participants (TBC)

Ms. Linda Lizotte-MacPherson, President
Ms. Nada Semaan, Executive Vice-President
Mr. Peter Hill, Associate Vice-President, Programs Branch
Ms. Caroline Xavier, Vice-President, Operations Branch



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Protected A

ANNOTATED AGENDA

Meeting with Mr. Deepak Chopra, President and Chief Executive Officer of Canada Post Corporation

Wednesday October, 2016, 10:00 a.m. – 11:00 a.m.
191 Laurier Ave. West, 6th Floor, President's Boardroom

LOGISTICS

The delegation will be escorted to the President's boardroom.

CBSA MEETING OBJECTIVE	
OPENING REMARKS	<p>Speaking Points:</p> <ul style="list-style-type: none">•••••••

Track My Package - CPC Website Messages

CPC Message	Reason
Item is not yet in Canada	<ul style="list-style-type: none">••
Receipt of Dispatch/ Container in Canada	<ul style="list-style-type: none">•
Item arrived in Canada	<ul style="list-style-type: none">•
Item is with Customs	<ul style="list-style-type: none">••
Item is with Canada Post	<ul style="list-style-type: none">••••••
Item is delivered	<ul style="list-style-type: none">• Item was delivered to the destination address

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Services AgencyAgence des services
frontaliers du Canada**COPY**

C:\JARAS\02748

ROUTING SLIP/BORDEREAU D'ACHEMINEMENT

	ACTION REQUIRED/ MESURE REQUISE		
Name and Telephone Number/ Nom et numéro de téléphone	Initials and date/ Initiales et date	Action	Information
President/Présidente Linda Lizotte-MacPherson	JUN 23 2016	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Executive Vice-President/ Première vice-présidente Nada Semaan	JUN 23 2016	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Vice-President/ Vice-président Jean-Stéphen Piché	ORIGINAL APPROVED - JUN 22 2016		
Director General/ Directeur général Philippe Thompson Tel. /Tél. : 613-948-1164	original approved 20-06-16		
Director/Directeur Marc Morin Tel. /Tél. : 613-957-3186	MAR 20-06-16		
Manager / Gestionnaire Kimberley Accardi Tel. /Tél. : 613-957-3194	KIMBERLEY ACCARDI		
Originator/Auteur	Katherine Gendreau		
Subject/Objet:	DM meeting with the Chief Human Resources Officer on Interchange Canada.		
Action/Mesure:	For information/ Pour information		
To provide information on the Interchange Canada Program in preparation for the Deputy Ministers meeting on June 27, 2016.			
Attachments:	1- Issue Sheet 2- Policy on Interchange Canada 3- Directive on Interchange Canada		
2016-06-14			

RECEIVED

JUN 21 2016

Vice-president Office/
Bureau du Vice-Président
Human Resources Branch/



Canada Border
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frontaliers du Canada

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For information

**DEPUTY MINISTER MEETING WITH THE CHIEF HUMAN RESOURCES OFFICER
ITEM DISCUSSED: INTERCHANGE CANADA**

For the President

SYNOPSIS

Deputy Ministers are invited to discuss the Interchange Canada Program. This discussion will focus on our organizational needs with respect to Interchange Canada, any barriers encountered with the mechanism as well as whether we require additional tools to promote its use.

BACKGROUND

The Treasury Board of Canada Secretariat initiated a policy suite review in the Fall of 2014. Through this initiative, TB policy instruments are being examined and updated with the aim to streamline, align and clarify policy requirements.

The Office of the Chief Human Resources Officer of the Treasury Board of Canada Secretariat is responsible for reviewing the *Policy on Interchange Canada* and the *Directive on Interchange Canada* (attached).

Your participation in this session will help shape recommendations on how to improve the Policy on Interchange Canada.

CBSA'S USE OF INTERCHANGE

Since 2013, the CBSA has entered into forty four (44) Interchange Agreements, the majority of which were incoming assignments (31).

The Agency principally uses the interchange program to share resources across the Public Safety portfolio (CSIS, RCMP) and to partner with the Canada Revenue Agency (CRA) with whom we share enterprise wide systems. As these organizations are not part of the core public service, interchange agreements are the only vehicle to support the exchange of resources.

KEY INTERVENTIONS REGARDING THE AGENCY

Overall, the Interchange Canada Program is a great tool that supports information sharing and enhances the public service skill set. That being said, we propose the following for consideration while the Interchange Policy is under review:

- Currently, there is no procedural distinction between the private sector organizations and separate agencies or Crown Corporations. Members of the broader federal family are bound by similar codes of conduct and conflict of interest as such we would like to see the procedural requirements for these organizations streamlined to facilitate mobility with separate agencies and Crown Corporations.
- The rigidity of the requirement that two (2) years lapse before a former participant accepts another interchange, regardless of the duration of the agreement, has presented a barrier for the Agency in the past. The objective of this parameter is to ensure that the employee's substantive organization benefits from the experience acquired on interchange. In application however, this means that a person who undertakes a six (6) week interchange is bound by the same restriction as a person who accepted a two (2) year interchange. We would propose that these parameters be expanded to stipulate a window at the home organization as opposed to a minimum period. For example, to be eligible, individuals cannot have spent more than a total of two (2) years on interchange within the last four (4) years.

Jean-Stéphen Piché
Vice-President
Human Resources Branch



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→ [Policy on Interchange Canada](#)

Policy on Interchange Canada

1. Effective Date

1.1 This policy takes effect on June 1, 2012 and replaces the *Policy on Interchange Canada* dated February 15, 2007.

2. Application

2.1 This policy applies to the core public administration as defined in section 11 of the *Financial Administration Act* unless excluded through specific acts, regulations or Orders in Council.

Section 6.3.1 c) of the Monitoring and Reporting Requirements, and section 7.2 c) of the Consequences, do not apply with respect to the Office of the Privacy Commissioner, the Office of the Information Commissioner, the Office of the Chief Electoral Officer, the Office of the Commissioner of Official Languages, the Office of the Commissioner of Lobbying, and the Office of the Public Sector Integrity Commissioner. The deputy heads of these organizations are solely responsible for monitoring and ensuring compliance with this policy within their organizations, as well as for responding to cases of non-compliance in accordance with any Treasury Board instruments that address the management of compliance.

2.2 This policy applies to incoming participants assigned to, and outgoing participants classified in, any occupational group and level up to and including EX-05.

3. Context

Interchange Canada is an exchange program between the core public administration and other organizations in private, public and not-for-profit sectors in Canada and internationally. By taking temporary assignments, employees develop professionally while organizations participating in the Program benefit from new knowledge, skills and approaches. Organizations may use the Program for job enrichment, talent management or skills-exchange.

3.1 Treasury Board has delegated to deputy heads the authority to manage Interchange Canada assignments within their organizations in accordance with policy requirements.

3.2 This policy is issued by the Treasury Board under the authority of section 7 and 11.1 of the *Financial Administration Act*.

3.3 This policy is to be read in conjunction with the *Foundation Framework for Treasury Board Policies* and the *Policy Framework for People Management*.

3.4 While on temporary assignment, participants remain employees of the sponsoring organization to ensure an employer-employee relationship with the host organization is not created.

4. Definitions

4.1 For definitions of terms used in this policy, refer to the Appendix A.

5. Policy Statement

5.1 Objectives

The objectives of this policy are to help the Government of Canada provide better service to Canadians and contribute to workforce and workplace development by:

- a. supporting the acquisition and/or transfer of knowledge and expertise through temporary assignments by assisting participating organizations in meeting their business and human resources objectives;
- b. contributing to an enriched understanding of how the core public administration functions and to better understand the business of other sectors; and
- c. fostering the professional and leadership development of participants.

5.2 Expected Results

The expected results of this policy are:

- a. organizations benefit from participant contributions towards achieving business and human resources objectives;
- b. participants acquire and/or develop new competencies or practices; and
- c. fair and transparent management of Interchange Canada assignments.

6. Policy Requirements

6.1 Deputy head's responsibilities

6.1.1 Deputy heads ensure that their Head of HR identifies a Liaison Officer to support them in managing the Interchange Canada Program within their organization and to act as the principal contact for the Office of the Chief Human Resources Officer where required for corporate purposes set out in this policy and associated directive.

6.1.2 Deputy heads are exclusively responsible for approving the following:

- a. assignments of more than one year where the individual does not meet the linguistic requirements for the duties they are performing on assignment;

- b. the refund of salary, employer-paid benefits and/or relocation costs for less than the full amount if this is deemed to be the most appropriate means to advance the objectives of this policy; and
- c. waiving any or all provisions of the National Joint Council's *Foreign Service Directives* when the employee wishes to proceed with an assignment outside Canada without these entitlements and makes a request to do so in consultation with the bargaining agent as per the authorities in Directive 3.01 of the National Joint Council's *Foreign Service Directives*.

6.1.3 Deputy heads exclusively approve, on an exceptional basis, the following:

- a. extensions of up to a maximum of two additional years beyond the three-year assignment period;
- b. refund of salary of incoming participants where the amount exceeds the provisions set out in the *Directive on Interchange Canada*, (Appendix B, Part IV, section 4.8); and
- c. incoming assignments of participants who are employees of, and sponsored by, a personal corporation.

6.1.4 Deputy heads ensure that an employee/employer relationship does not develop between his/her organization and a participant from an outside organization; and ensure that an employee who is on an Interchange assignment outside the core public administration retains his/her status as an indeterminate employee under the *Public Service Employment Act* for the duration of the assignment.

6.1.5 Deputy heads may extend to incoming participants who are required to travel in the performance of their duties, refunds in accordance with the *Special Travel Authorities* and in accordance with the employee provisions of the National Joint Council's *Travel Directive*, except for:

- a. those provisions found under Part V – Emergencies, illnesses, injuries and death while on travel status; and
- b. access to government travel cards.

6.1.6 Deputy heads ensure that participants meet the eligibility criteria described in the *Directive on Interchange Canada*, (Appendix B, Part I).

6.2 Assignments

6.2.1 For all assignments, deputy heads ensure that:

- a. assignments are approved in writing by all parties prior to commencement and are part of the departmental integrated business and human resources plan;
- b. the compensation formula provided in the *Directive on Interchange Canada*, (Appendix B, Part IV, Section 4.8) is adhered to;
- c. if there is a possibility of conflict of interest prior to, or during the assignment, the deputy head ensures that the situation is addressed in accordance with the *Values and Ethics Code for the Public Sector*, the *Policy on Conflict of Interest and Post-Employment*, and with organizational Codes of Conduct, or a decision is made not to proceed or continue with the assignment;

- d. risks relating to the stewardship of public resources are adequately managed through effective internal controls in accordance with the *Policy on Internal Control*;
- e. the terms and conditions of the letter of agreement are respected; and
- f. ministers are not involved in decisions related to individual assignments, and recommendations from ministers or ministers' offices regarding participants will not be considered.

6.3 Monitoring and Reporting Requirements

6.3.1 Deputy heads are responsible for:

- a. monitoring adherence to this policy and its supporting directive through periodic audits and other reviews to ensure their effective implementation;
- b. ensuring that appropriate and timely action is taken to address issues relating to the management of the Interchange Canada Program; and
- c. providing reports or information as requested by the Office of the Chief Human Resources Officer, Treasury Board Secretariat.

6.3.2 Treasury Board Secretariat is responsible for:

- a. oversight and monitoring of compliance with this policy and the achievement of expected outcomes through a Treasury Board Secretariat monitoring framework including reporting and analysis;
- b. reviewing and reporting to the Treasury Board on the effectiveness and implementation of this policy and its directive at the five-year mark.

7. Consequences

7.1 Deputy heads are responsible for investigating and acting when issues arise regarding policy compliance and ensuring that appropriate actions are taken to address these issues, in accordance with the *Framework for the Management of Compliance*.

7.2 The consequences of policy application errors or non-compliance include:

- a. deputy heads may suspend all or part of delegated authorities from specific managers for Interchange Canada assignments following an application error or non-compliance;
- b. deputy heads may take into consideration application errors or non-compliance in managerial accountability agreements and performance appraisals; and
- c. the Chief Human Resources Officer, on the basis of analysis of monitoring and related information, may recommend to the Treasury Board that the deputy head's delegation of authority for Interchange Canada be reduced or suspended.

8. References

8.1 Other relevant legislation

- *Access to Information Act*
- *Financial Administration Act*
- *Income Tax Act*
- *Official Languages Act*
- *Privacy Act*
- *Public Servant's Disclosure Protection Act*
- *Public Service Employment Act*
- *Security of Information Act*

8.2 Related policies and publications

- *Government Security Policy - Policies and Publications*
- *National Joint Council's Foreign Service Directives*
- *National Joint Council's Isolated Posts and Government Housing Directive*
- *National Joint Council Integrated Relocation Directive*
- *National Joint Council's Travel Directive*
- *Policy on Conflict of Interest and Post-Employment*
- *Policy on Internal Control*
- *Policy on Legal Assistance and Indemnification*
- *Values and Ethics Code for the Public Sector*

9. Enquiries

Enquiries concerning this policy should be forwarded to your departmental Liaison Officer. For questions on this policy instrument, the departmental Liaison Officer may contact TBS Public Enquiries.

Appendix A

Definitions

Addendum agreement (*addenda*)

a written signed document that sets out the changes to the terms or conditions of the letter of agreement.

Core public administration (*administration publique centrale*)

departments as defined in Schedule I, and the other portions of the federal public administration named in Schedule IV of the *Financial Administration Act*.

Deputy heads (*administrateurs généraux*)

deputy head has the same meaning as in s. 11(1) of the *Financial Administration Act*.

Incoming participant (*participant provenant de l'extérieur*)

an employee from a private, public or not-for-profit sector organization who is on an Interchange Canada assignment in an organization in the core public administration.

Letter of agreement (*lettre d'entente*)

a written, signed document that sets out the responsibilities of the sponsoring organization, the participant and the host organization, and the terms and conditions of the assignment.

Outgoing participant (*participant en affectation à l'extérieur*)

an employee from the core public administration on an Interchange Canada assignment with an outside private, public or not-for-profit sector organization.

Personal corporation (*corporation personnelle*)

an organization that is solely or partly owned by the incoming participant, and that is incorporated or continued under the legislation in Canada or in another country. A sole proprietorship is not considered a corporation and therefore may not enter into an agreement under the Interchange Canada Program.

Date modified:

2011-12-16



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→ [Directive on Interchange Canada](#)

Directive on Interchange Canada

1. Effective Date

1.1 This directive takes effect on June 1, 2012 and replaces the *Directive on Interchange Canada* dated February 15, 2007.

2. Application

2.1 This directive applies to the core public administration as defined in section 11 of the *Financial Administration Act* unless excluded through specific acts, regulations or Orders in Council.

Section 6.2.2 of the Monitoring and Reporting Requirements, and section 7.2 c) of the Consequences, do not apply with respect to the Office of the Privacy Commissioner, the Office of the Information Commissioner, the Office of the Chief Electoral Officer, the Office of the Commissioner of Official Languages, the Office of the Commissioner of Lobbying, and the Office of the Public Sector Integrity Commissioner. The deputy heads of these organizations are solely responsible for monitoring and ensuring compliance with this policy within their organizations, as well as for responding to cases of non-compliance in accordance with any Treasury Board instruments that address the management of compliance.

3. Context

3.1 This directive provides deputy heads and their delegated managers with mandatory requirements regarding the manner in which Interchange Canada is to be managed in support of the *Policy on Interchange Canada*.

3.2 This directive is issued pursuant to sections 7 and 11.1 of the *Financial Administration Act*.

3.3 This directive is to be read in conjunction with the *Foundation Framework for Treasury Board Policies* and the *Policy Framework for People Management*.

4. Definitions

4.1 For definitions of terms used in this directive, refer to the Appendix A.

5. Directive Statement

5.1 Objective

The objective of this directive is to:

Ensure that Interchange Canada assignments are managed in a fair and transparent manner.

5.2 Expected Results

- a. Delegated managers and designated Liaison Officers exercise their roles and responsibilities in the management of Interchange Canada assignments.
- b. Fair and transparent Interchange Canada assignments that support the objectives of the Program, as well as those of participants, organizations and the Government of Canada.

6. Requirements

6.1 Delegated managers ensure that assignments are managed in accordance with the requirements described in Appendix B in regards to eligibility criteria, assignments, letter of agreement, salary, benefits and refund, and relocation.

6.2 Monitoring and Reporting Requirements

6.2.1 Deputy heads are responsible for monitoring adherence to the directive within their organization, consistent with the provisions of the Treasury Board's *Policy on Interchange Canada*. Deputy heads are responsible for ensuring that appropriate remedial action is taken to address non-compliance.

6.2.2 Heads of HR ensure that Liaison Officers oversee the application of the *Policy and Directive on Interchange Canada* and provide to the Treasury Board Secretariat, Office of the Chief Human Resources Officer the following information considered necessary for assessing compliance and evaluating the program's performance against the expected results:

- Report of Participant assignment details; and,
- changes to assignment details including extensions or early termination.

6.2.3 Departments retain documents on assignments of participants from personal corporations for audit purposes for a period of six years after the end of the assignment.

6.2.4 The Treasury Board Secretariat is responsible for monitoring compliance with this directive and the achievement of expected outcomes through a TBS monitoring framework including reporting and analysis.

6.2.5 The Treasury Board Secretariat, Office of the Chief Human Resources Officer will review this directive and its effectiveness at the five-year mark.

7. Consequences

7.1 Deputy heads are responsible for investigating and acting when issues arise regarding compliance and ensuring that appropriate actions are taken to address these issues in accordance with the *Framework for the management of Compliance*.

7.2 The consequences of application errors or non-compliance with this directive include:

- a. Deputy heads may suspend all or part of delegated authorities from specific managers for Interchange Canada assignments following an application error or non-compliance;
- b. Deputy heads may take into consideration application errors or non-compliance in managerial accountability agreement and performance appraisals; and
- c. The Chief Human Resources Officer, on the basis of analysis of monitoring and related information, may recommend to the Treasury Board that the deputy head's delegation of authority for Interchange Canada be reduced or suspended.

8. References

8.1 Other relevant legislation

- *Access to Information Act*
- *Financial Administration Act*
- *Income Tax Act*
- *Official Languages Act*
- *Privacy Act*
- *Public Servant's Disclosure Protection Act*
- *Public Service Employment Act*
- *Security of Information Act*

8.2 Related policies and publications

- *Government Security Policy – Policies and Publications*
- *National Joint Council's Foreign Service Directives*
- *National Joint Council's Isolated Posts and Government Housing Directive*
- *National Joint Council's Integrated Relocation Directive*
- *National Joint Council's Travel Directive*
- *Policy on Conflict of Interest and Post-Employment*
- *Policy on Legal Assistance and Indemnification*
- *Values and Ethics Code for the Public Sector*

9. Enquiries

Enquiries concerning this directive should be forwarded to your departmental Liaison Officer. For questions on this policy instrument, departmental Liaison Officers may contact TBS Public Enquiries.

Appendix A

Definitions

Addendum agreement (*addenda*)

a written signed document that sets out the changes to the terms or conditions of the letter of agreement.

Core public administration (*administration publique centrale*)

departments as defined in Schedule I, and the other portions of the federal public administration named in Schedule IV of the *Financial Administration Act*.

Deputy heads (*administrateurs généraux*)

deputy head has the same meaning as in s. 11(1) of the *Financial Administration Act*.

Incoming participant (*participant provenant de l'extérieur*)

an employee from a private, public or not-for-profit sector organization who is on an Interchange Canada assignment to an organization in the core public administration.

Letter of agreement (*lettre d'entente*)

a written, signed document that sets out the responsibilities of the sponsoring organization, the participant and the host organization, and the terms and conditions of the assignment.

Outgoing participant (*participant en affectation à l'extérieur*)

an employee from the core public administration on an Interchange Canada assignment to an outside private, public or not-for-profit sector organization.

Personal corporation (*corporation personnelle*)

an organization that is solely or in part owned by the incoming participant, and that is incorporated or continued under the legislation in Canada or in another country. A sole proprietorship is not considered a corporation and therefore may not enter into an agreement under the Interchange Canada Program.

Appendix B

Requirements

- Part I – Eligibility Criteria
- Part II – Assignments
- Part III – Letter of Agreement
- Part IV – Salary, Benefits and Refunds
- Part V – Relocation

Part I – Eligibility Criteria

1.1 A prospective Interchange Canada participant:

- a. is an employee of a sponsoring organization, including a personal corporation, and remains an employee of that organization throughout the assignment;

- b. has been an employee of the sponsoring organization, including a personal corporation, for a period of six months prior to the commencement of the assignment;
- c. has the competencies to meet the operational and organizational requirements of the assignment;
- d. is not in a conflict of interest as a result of the assignment in accordance with the *Values and Ethics Code for the Public Sector*, the *Policy on Conflict of Interest and Post-Employment* and organizational Codes of Conduct;
- e. meets the required reliability checks and security clearances of the host organization; and
- f. is not a ministerial staff member. Employees of the core public administration cannot use Interchange Canada for assignments as ministerial staff.

1.2 There is a minimum period of two years before a former participant may participate again on Interchange Canada.

Part II – Assignments

2.1 Full-time or part-time assignments can last up to three consecutive years, whether the assignment takes place in one or more organizations.

2.2 In exceptional circumstances, an extension of up to two additional years beyond the three consecutive years can be obtained upon the approval of the deputy head.

2.3 If an assignment is concluded earlier than agreed to in the letter of agreement or the addendum, a written notice from one of the parties to the letter of agreement must be provided. The notice period is one calendar month.

2.4 An assignment can be temporarily interrupted for a specific period of time with the written agreement of all parties. The remaining portion of the assignment can be postponed until the participant returns to work.

2.5 Incoming participants are required to respect the principles and intent of the *Values and Ethics Code for the Public Sector* and the *Policy on Conflict of Interest and Post-Employment*, and to refrain from engaging in any political activity that may impair, or be perceived as impairing, the participant's ability to perform his or her duties in a politically impartial manner, or otherwise diminish the principle of political impartiality in the public service. They are also required to respect organizational Codes of Conduct.

2.6 Outgoing participants are aware that they continue to be subject to the *Values and Ethics Code for the Public Sector* and the *Policy on Conflict of Interest and Post-Employment* as a condition of their continuous employment in the core public administration and continue to be subject to Part 7 ("Political Activities") of the *Public Service Employment Act*. They are also required to respect organizational Codes of Conduct.

2.7 If a participant was previously employed in a federal, provincial, municipal, or territorial political office or party within the preceding 12 months of the assignment, the deputy head must sign an attestation that the assignment is free of political influence.

2.8 Participants usually meet the official language requirements of the functions or the position as set out in the *Official Languages Act* and related policies. Where participants do not meet the language requirements, measures must be taken to ensure that linguistic obligations relating to service to the public and language of work are met.

2.9 Sponsoring and host organizations jointly determine the cycle for performance management, the reporting format, and the collection and distribution of performance reports to appropriate parties.

2.10 Incoming participants are to return all loaned government property and all material whether classified or unclassified. All records produced by the incoming participants or by anyone on their behalf, in carrying out any duty related to an assignment remain the property of the Government of Canada and are subject to Crown copyright. All information incoming participants acquire in the course of the assignment remains subject to the *Security of Information Act* and the *Policy on Government Security* after the conclusion of the assignment.

2.11 The *Policy on Legal Assistance and Indemnification* applies to incoming participants while on assignment.

2.12 The *Policy on Legal Assistance and Indemnification* does not apply to employees of the core public administration while they are on outgoing assignments. The host organization will provide the participant with legal services and will indemnify him/her with regard to acts or omissions arising out of their assignment with the host organization. If the host organization does not confirm in the letter of agreement that it will provide legal services or indemnify the participant, the participant proceeds with the assignment at his/her own risk.

2.13 Reliability checks and security clearances are the responsibility of the host organization. For incoming participants, such checks and clearances are done in accordance with the applicable Treasury Board security policies and publications.

2.14 An incoming participant must successfully complete required training prior to receiving delegated signing authorities.

2.15 An incoming participant who is an employee of a personal corporation must:

- a. obtain private accident insurance, supplementary medical insurance and long-term disability insurance, prior to the commencement of the assignment and for its duration; and
- b. demonstrate that the sponsoring organization has registered with the Canada Revenue Agency to remit Goods and Services Taxes/Harmonized Sales Tax, Canada Pension Plan/Quebec Pension Plan/Employment Insurance and income taxes, as applicable.

Part III – Letter of Agreement

3.1 A bilingual letter of agreement will be in place prior to the commencement of an assignment. If agreed to by all parties or within a unilingual region, the letter of agreement may be unilingual.

3.2 Changes to the terms and conditions of the letter of agreement are confirmed in an addendum to the agreement.

3.3 Letters of agreement templates are provided by the Office of the Chief Human Resources Officer within the Treasury Board Secretariat.

3.4 The letter of agreement is signed by the parties and includes at a minimum:

- a. A statement that the participant is an employee of the sponsoring organization, including a personal corporation, and will remain so throughout the assignment;
- b. A statement that the participant will return to a position with the sponsoring organization at a rate of remuneration of not less than their present salary;
- c. The start and the end date of the assignment;
- d. The compensation amounts to be refunded;
- e. A statement indicating how official language requirements will be met;
- f. The information that the parties agree to make publicly available;
- g. The approach to performance evaluation, where performance or variable pay is concerned (e.g., the Executive Group);
- h. A statement concerning the participant's obligations under the *Values and Ethics Code for the Public Sector*, the *Policy on Conflict of Interest and Post-Employment*, Part 7 ("Political Activities") of the *Public Service Employment Act* and organizational Codes of Conduct; and
- i. The following statement: "The (name of the sponsoring organization) will ultimately be responsible for any workers' compensation-related costs, regardless of who was designated responsible by the applicable provincial or territorial workers' compensation board".

3.5 For incoming participants, the letter of agreement also includes that the participant will abide by various legislative, regulatory, policy and other relevant provisions (e.g. the *Official Languages Act*, intellectual property rights and the *Security of Information Act*).

Part IV – Salary, Benefits and Refunds

4.1 During the assignment, the sponsoring organization continues to pay the participant's full salary, except as outlined in Appendix B, Part V, Sections 5.2 and 5.3. All other terms and conditions of the participant's substantive position in the sponsoring organization apply, such as any adjustments that accrue during the assignment period.

4.2 The host organization refunds to the sponsoring organization the cost of the participant's full salary, employer-paid benefit costs, overtime and, if applicable, performance pay and the bilingualism bonus. The sponsoring organization, in turn, pays the participant. Host organizations do not pay compensation directly to participants.

4.3 Participants are subject to the working conditions of the host organization, such as working hours, working authorized overtime or taking vacation or unpaid leave where operational requirements permit. Overtime is to be authorized and paid in accordance with the sponsoring organization's rates. For incoming participants, unused annual leave accumulated during the assignment may be refunded to the sponsoring organization by the host organization at the end of the assignment.

4.4 Organizations cannot charge fees for managing the administrative requirements of the

assignment or participant.

4.5 Host organizations are responsible for all business expenses, such as preliminary candidate interviews, business travel and formal training while on assignment.

4.6 Terminable allowances and retention bonuses are not included in the calculation of total compensation nor are the relocation costs or travel expenses.

4.7 The employer-paid benefit costs are calculated as a percentage of salary. The current figure used for outgoing participants is 26.5%.

4.8 Incoming participants earning more than the total compensation package of the selected group and level:

Typically, the salary refund for an incoming participant should not exceed 125% of the total compensation package associated with the group and level selected for the value of the work to be performed. Deputy head approval is required for salary refunds beyond 125%.

The following example illustrates the calculation of total compensation.

Maximum of the salary range of the selected group and level	\$77,216
Multipled by 26.5%	\$77,216 X 26.5% = \$20,462
Total compensation package	\$97,678
Multipled by 125%	\$97,678 X 125% = \$122,097

The maximum salary that can be refunded without deputy head approval is \$122,097.

In addition to refunding the salary of \$122,097, the host organization also refunds the participant's employer-paid benefits and, if applicable, performance pay.

4.9 While on assignment, outgoing participants remain at their substantive group and level and cannot receive additional compensation from the host organization, such as acting pay or a bonus.

4.10 To determine performance pay (in-range movement and variable pay) for outgoing participants, participants are responsible for establishing a written performance agreement with the host organization at the beginning of each performance cycle. The agreement documents performance expectations by distinguishing between ongoing and key commitments for the assignment, performance measures, and results to be achieved during the cycle.

4.11 The host organization does not pay the sponsoring organization for GST/HST with the exception of personal corporations.

Part V – Relocation

5.1 Outgoing participants are subject to the relocation provisions listed in the Appendix to the National Joint Council (NJC) Relocation - Integrated Relocation Program (IRP) Directive pertaining to Interchange Canada.

5.2 Deputy heads can negotiate a refund of relocation expenses for incoming participants, and they can use as a reference either the relocation provisions established by the sponsoring organization or the relocation provisions listed in the Appendix to the *National Joint Council (NJC) Relocation - Integrated Relocation Program (IRP) Directive* pertaining to Interchange Canada.

5.3 Outgoing participants who receive isolated post allowances because their substantive position is located in an isolated post, continue to receive these allowances while on assignment provided they are maintaining a household or dependants in the isolated post.

5.4 Participants with a sponsoring organization in a location other than an isolated post are not eligible to receive isolated post allowances while they are on an Interchange Canada assignment.

5.5 Participants on outgoing international assignments are entitled to the benefits in the National Joint Council's *Foreign Service Directives*. However, an outgoing participant may, in consultation with the appropriate bargaining agent, when applicable, and with the written agreement of the deputy head, waive entitlements to any or all provisions of the *Foreign Service Directives*.

5.6 The *Foreign Service Directives* also apply to an incoming participant for an assignment that involves working outside of Canada and their home country.

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